IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 621 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT INDUSTRIAL CO-OP BANK LTD

Versus

D G JOBANPUTRA

Appearance:

1. Special Civil Application No. 621 of 1992

MR ARUN H MEHTA for Petitioner No. 1

MR TUSHAR MEHTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 09/04/2004

ORAL JUDGEMENT

Heard learned senior advocate Mr.A.H.Mehta appearing on behalf of the petitioner and learned advocate Mr.Tushar Mehta for the respondent workman.

In the present petition, the petitioner bank has challenged the award passed by the labour court, Rajkot in Reference No.1001 / 1983 whereby the labour court has set side the order of termination and directed the petitioner to pay 30 % benefits for the period from 24th June, 1983 to the date of retirement 31st October, 1991 and other benefits also according to the standing orders that are required to be paid by the petitioner to the respondent workman.

Learned advocate Mr.A.H.Mehta submitted that the respondent was working as the Branch Manager at the relevant time in the petitioner bank in the Branch at Bhavnagar. Service of the respondent was terminated on the basis of the misconduct by order dated 24th June, 1983 and that order was challenged before the labour court. Learned advocate Mr.Mehta has contended that before passing of the termination order, regular departmental inquiry was held, chargesheet was served and reasonable opportunity was given and thereafter, termination order has been passed. He also raised contention that Branch Manager is not covered by the definition under Section 2[s] of the Industrial Disputes Act, 1947 as the workman and therefore, the labour court has no jurisdiction to examine the legality and validity of the termination order which came to be passed against the respondent in the capacity of the Branch Manager. The further contention raised by the learned advocate Mr.Mehta that the respondent being the Branch Manager, was required to perform the work of supervisory nature as well as managerial and administrative in nature receiving salary more than Rs.1600/- per month from the Bank. Therefore, learned advocate Mr.Mehta has relied upon two decisions in case of B.S.O.S. & D.CO V. MANAGEMENT STAFF ASSOCIATION reported in AIR 1971 SC 922 and MANAGEMENT OF M/S MAY AND BAKER [INDIA] LTD V. THEIR WORKMEN [AIR 1967 SC 678]. The contention of the petitioner is that "test of dominant to main work" and applying the said test to the facts of the present case that on some day the respondent might have done some clerical work, would not bring him within the definition of "workman" and that does not mean that the workman was not acting as the Branch Manager and therefore, his contention is that the labour court has committed an error in deciding this question and thereafter, considering the merits of the matter.

Learned advocate Mr.Tushar Mehta for the respondent has submitted that the labour court has rightly examined the issue of the workman and rightly

come to the conclusion. He also submitted that the labour court has rightly considered the entire duties and functions of the Branch Manager, wherein the most of the work carried out by the Branch Manager, based and dependent after receiving the instruction from the higher officers and therefore, the respondent was not having full authority and power to take independent decision in respect of the branch wherein he was working. Therefore, he submitted that no error has been committed by the labour court while passing the award impugned in the present petition and the same deserves to be dismissed.

I have considered submissions made by the learned advocates on behalf of both the parties and also perused the award impugned in this petition. The labour court has examined the main issue in para-7 of the award. The labour court has considered the definition workman under Section 2[s] of the Industrial Dispute Act, 1947. The labour court has also considered certain decisions relied upon by the both the parties and also oral evidence led by the parties before the labour court. The labour court has also examined the issue, whether the respondent is workman within the meaning of Section 2[s] of the I.D.Act which is at page.28 of the record. The labour court has also observed that there is no dispute that the respondent was working as the Branch Manager. The respondent having powers to take work from the subordinate staff viz. Clerks and Peons and was also empowered to make expenses about Rs.250/- and miscellaneous expenses. The Bank has issued one circular dated 7th January, 1978 in which the powers and duties of the Branch Manager have been defined by the Bank and further clarified how to take work from the subordinate staff and the manner of supervision over the subordinate staff also clarified in the said circular. However, the labour court has come to the conclusion that the respondent as the Branch Manager cannot appoint any person and cannot hold departmental inquiry, so also, cannot sanction the leave but these are all powers subject to receiving of instructions from the Regional Office. That he is not authorised to grant permission and to impose any penalty against the subordinate staff and therefore, he had no power to take any independent decision and hence, according to the labour court, the respondent was covered by the definition of the workman.

I have given my thoughtful consideration to the observations made by the labour court in respect of the preliminary point raised by the Bank. It is relevant to note one important aspect that in the deposition of the workman himself, he admitted that as Branch Manager, he

is working in the supervisory capacity but he is doing clerical work. However, in the cross examination of the respondent which is at page.33, wherein he admitted that as per Exh.25 he was responsible to work and perform duties. That he was head of the Department in Bhavnagar Branch and he is doing the work as Clerical and he was authorised and empowered to make miscellaneous expenses and he was having powers to issue over draft and also to sanction the loan. He was having powers to sanction sick leave and casual leave. He can also file suit on behalf of the Bank and can also file reply on behalf of the bank. In the pay bill, over time register and medical bill as paying Officer, he was required to sign the said registers. He was having powers to have communication with the other banks and was also required to see that the work of the branch may be developed and prosper and in case of promotion also, he was required to fill up confidential report of the concerned employee. Thus, in view of this cross examination of the respondent and certain evidence from the chief examination that he is doing the work of Accountant.

I have considered the said cross examination of the respondent as well as observations made by the labour court at page.28. According to my opinion, looking to the nature of duties and functions performed by the respondent as the Branch Manager, he cannot be considered to be workman only because he used to do some clerical work. In fact, he was having position of Head of the Branch and the main work of the respondent was to supervise the work of the subordinate staff and to have work from them and to take independent decision about their confidential report, sanctioning the leave and casual leave and also to have independent communication with the other banks. Thus, these are the supervisory powers and capacity of managerial duties in nature. Furthermore, the salary of the respondent was more than Rs.1600/- and therefore, considering these facts on record, according to my opinion, the labour court has committed an error in appreciating the oral evidence including the cross examination of the respondent in respect of the duties and powers. Therefore, finding given by the labour court that the respondent is covered within the definition of workman under Section 2[s] of the Act, is erroneous and contrary to the settled position of law. This aspect has been examined by the Calcutta High Court in case of APARNA KUMAR DHARGUPTA V. M/S UNITED INDUSTRIAL BANK INDIA LTD. reported 1979 Lab.I.C. 506, wherein, the Court has observed as under :

"The plaintiff was appointed branch manager of a

bank for indefinite period. He was occupying the highest position among all the employee in that branch and was in complete charge of that branch.

HELD : The position of a branch manager in a Bank was full of risk and responsibilities. Three months' notice terminating his service would be reasonable on the facts and circumstances of the case. The defendant did not adduce any evidence that the plaintiff had the opportunity of getting a similar or better job at that time. On the facts and circumstances of the case the termination of plaintiff's service by one month's notice without any justified ground was wrongful and illegal. The plaintiff was entitled to three months' notice for termination of his service. AIR 1960 Cal 214, [1938] 4 All ER 467, AIR 1930 Cal 404, [1952] 2 All ER 1121, [1916] 33 TLR 77, AIR 1963 Ker 248, Considered."

Even recently also, this aspect has been considered by the Apex Court in case of HUSSAN MITHU MHASVADKAR V. BOMBAY IRON AND STEEL LABOUR BOARD AND ANOTHER reported in 2001 Lab.I.C. 3330. The relevant observations in the aforesaid case in para-10 are referred as under :

"10. No doubt, in deciding about the status of an employee, his designation alone cannot be said to be decisive and what really should go into consideration is the nature of his duties and the powers conferred upon as well as the functions assigned to him. Even if the whole Undertaking be an Industry, those who are not workmen by definition may not be benefitted by the said status. It is the predominant nature of the services that will be the true and proper test. Operations of the Government which are pure and simpliciter administrative and of Governmental character or incidental thereto cannot be characterized to be "industrial" in nature, be it performed by a department of the Government or by a specially constituted statutory body to whom anyone or more of such functions are delegated or entrusted with. When, as in the case, as disclosed from S.15 of the Act as also the provisions of the scheme, the primary duties of an employee and the dominant purpose, aim and object of employment was to carry out only certain specific statutory duties in the matter of effective enforcement and implementation of

> the welfare scheme in order to ameliorate and rehabilitate a particular cross section of labour, and if need be, on the basis of his own decision which calls for an high degree of discretion and exercise of power to prosecute the violator of the provisions of the Act, Rules and the provisions of the scheme, we are unable to accord our approval to the claim made on behalf of the appellant that he can yet be assigned the status of a "workman", without doing violence to the language of S.2[s] and the very purpose and object of the I.D.Act, 1947. That apart, even judging from the nature of powers and the manner of its exercise by an Inspector, appointed under the Act, in our view, the appellant cannot be considered to be engaged in doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work and the mere fact that in the course of performing his duties he had to also maintain, incidentally, records to evidence the duties preformed by him, day-to-day, cannot result in the conversion of the post of "Inspector" into anyone of those nature noticed above, without which, as held by a Constitution Bench of this Court in the decision in H.R.Adyanthaya's case [supra], the appellant cannot fall within the definition of "workman". The powers of Inspector and duties and obligations cast upon him as such are identical and akin to law enforcing agency or authority and also on par with a prosecuting agency in the public law field."

The Division of this Court also in case of UMAKANT S. DESHPANDE V. G.E.B. AND ANOTHER reported in 2002 Lab.I.C.48 has held that determination, correct test is to look into nature of duties required to be performed by person holding particular post and considering the facts and circumstances of the case and while considering the definition of workman under Section 2[s] of the I.D.Act, 1947, held that Accounts Officer working under the Gujarat Electricity Board, drawing salary exceeding Rs.1600/- p.m., duty prescribed for said post is of supervisory character, and therefore, held that he cannot be said to be a workman.

In view of above observations of the Apex Court and the Division Bench of this Court, in the case on hand, this Court is not inclined to consider the merits of the matter and without entering into merits and the

legality of the inquiry and punishment, of the view, that looking to the evidence on record the respondent is not covered within the definition of the workman provided under Section 2[s] of the I.D.Act and this ground is suffice to set aside the award in question. However, it is clarified that this Court has not entered into the merits and has not examined the legality and validity of the other contentions raised in the petition and therefore, it will be open to the respondent to resort to the other remedy for redressal of his grievance before the appropriate forum in accordance with law.

In view of above discussion, present petition succeeds and the same is allowed to the extent indicated hereinabove. Rule is made absolute in the aforesaid terms with no order as to costs. Interim relief, if any, stands vacated.

Date : 9.4.2004 [H.K.Rathod, J.]

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